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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. STEVEN ARTHUR DEDMON, Defendant and Appellant.	F056944 (Super. Ct. Nos. MCR029298 & MCR031194) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Madera County. Jennifer R. S. Detjen, Judge.

Allan E. Junker, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Vartabedian, Acting P.J., Wiseman, J. and Gomes, J.

On July 17, 2008, appellant Steven Arthur Dedmon pled guilty in case No. MCR029298 to transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)). In case No. MCR031194, Dedmon pled guilty to possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and admitted an on-bail enhancement (Pen. Code, 12022.1).[1] In each case Dedmon admitted allegations that he had a prior conviction within the meaning of the three strikes law (§ 667, subds. (b)-(i)).

On appeal, Dedmon contends the court abused its discretion when it denied his motion to withdraw his plea. We will affirm.

FACTS

On August 3, 2007, a Madera police officer stopped the truck Dedmon was driving because it had an expired registration tag. When the officer approached Dedmon, his hands were shaking and he would not make eye contact with the officer. Dedmon also kept reaching toward his pants pockets, and the officer had to tell him several times to keep his hands on the steering column. As the officer opened the door for Dedmon to exit, Demon reached into his pocket and then attempted to swallow something. Dedmon ran, but was soon apprehended with the help of another officer who arrived on the scene. One officer recovered a baggie containing a small amount of marijuana from the ground in front of Dedmon's truck and a baggie containing a small amount of methamphetamine from the ground 10 yards from the truck. A check with dispatch disclosed that Dedmon's license had been suspended (case No. MCR029298).

On January 31, 2008, the district attorney filed a first amended information in case No. MCR029298 charging Dedmon with transportation of methamphetamine (count 1, Health & Saf. Code, § 11379, subd. (a)); possession of methamphetamine (count 2, Health & Saf. Code, § 11377, subd. (a)); resisting arrest (count 3, § 148, subd. (a)(1)); driving while his driving privilege was suspended (count 4,Veh. Code, §14601.5, subd.

[1] Unless otherwise indicated, all further statutory references are to the Penal Code.

(a)); and possession of 28.5 grams or less of marijuana (count 5, Health & Saf. Code, § 11357, subd. (b)). The information also charged Dedmon with six prior prison term enhancements (§ 667.5, subd. (b)) and alleged that Dedmon had a prior conviction within the meaning of the three strikes law (§ 667, subds. (b)-(i)).

On March 16, 2008, while on bail in the above case, Dedmon was seen by a Madera police officer walking out of a known drug house. The officer conducted a parole search of Dedmon and found a clear plastic baggie containing methamphetamine in his shirt pocket (MCR031194).

On March 21, 2008, the district attorney filed a first amended complaint in case No. MCR031194 charging Dedmon with possession of methamphetamine (count 1, Health & Saf. Code, § 11377, subd. (a)); resisting arrest (count 2, § 148, subd. (a)(1)); and possession of no more than 28.5 grams of marijuana (count 3, Health & Saf. Code, § 11357, subd. (b)). The complaint also alleged six prior prison term enhancements (§ 667.5, subd. (b)), an on-bail enhancement (§ 12022.1), and that Dedmon had a prior conviction within the meaning of the three strikes law (§ 667, subds. (b)-(i)).

On July 17, 2008, Dedmon pled guilty in case No. MCR029298 to transportation of methamphetamine and in case No. MCR031194 to possession of methamphetamine. Dedmon also admitted an on-bail enhancement and the allegations that he had a prior strike conviction. In exchange for his plea, the prosecutor agreed to dismiss the remaining counts and enhancements and to not file a written opposition to a *Romero*[2] motion that Dedmon would file asking the court to strike his prior strike conviction. The parties also agreed that Dedmon would receive a maximum term of nine years four months.

On September 15, 2008, the court heard and denied Dedmon's *Romero* motion. As soon as the court announced its ruling, the following colloquy occurred:

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[2] *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

"MR. GERINGER [Defense Counsel]: My client at this time would like to see about withdrawing his plea.

"THE COURT: On what basis?

"MR. GERINGER: It was his understanding that the --- with the strike he would still be receiving 50 percent of the time. But that's incorrect. He would have to do 80 percent.

"THE COURT: Why was that his understanding?

"MR.GERINGER: *I would have to say* it's probably my information that I provided him incorrectly.

"THE COURT: Why would you do that?

"MR. GERINGER: Well, *if I did it, I did it in error*.

"THE COURT: And the plea form doesn't say that.

"MR. GERINGER: Correct.

"THE COURT: So he I'm sure read the plea form and you probably went over it with him.

"MR. GERINGER: But it was his understanding it was supposed to be 50 percent good time. So he would ask the opportunity to have counsel file a motion to withdraw his plea based upon --

"THE COURT: Would that be a meritorious motion, Mr. Geringer?

"MR.GERINGER: I would have to say that *if I'm asked I'm going to have to be saying that I can't say for sure*, but *I may have strongly told him that it was going to be 50 percent*. I can't say that I didn't tell him that." (Italics added.)

The court then appointed substitute counsel to explore the possibility of filing a motion to withdraw Dedmon's plea.

On November 5, 2008, Dedmon filed a motion to withdraw his plea alleging that his defense counsel misadvised him that in prison he would be eligible for up to 50 percent worktime credit. In a declaration in support of the motion Attorney Geringer, in pertinent part, stated,

"6. Throughout the course of representing Mr. Dedmon and while discussing the settlement agreement, I advised Mr. Dedmon that *if he accepted this offer he could receive up to 50 percent good time credit while in state prison*.

"7. At no time did I inform Mr. Dedmon that time credits while in prison would be limited to 20 percent." (Italics added.)

In a supporting declaration, Dedmon stated that Attorney Geringer told him on more than one occasion that he could receive up to 50 percent worktime credit in prison and that it was not until sentencing, after having read the probation report, that he learned that his potential worktime credit was limited to 20 percent. Dedmon also claimed that if he had known that he would only receive 20 percent credit, he would not have entered a plea.

On December 15, 2008, the court denied Dedmon's motion.

On January 26, 2009, the court sentenced Dedmon to the stipulated term of nine years four months: the middle term of three years on the transportation conviction, doubled to six years because of Dedmon's prior strike conviction; a consecutive eight months on Dedmon's possession conviction, doubled to 16 months for the same reason; and a two-year on-bail enhancement.

DISCUSSION

Dedmon contends he showed that defense counsel provided ineffective representation because counsel affirmatively advised him that he could receive up to 50 percent worktime credit. He further contends that he demonstrated that he would not have entered into a plea if he had known that he would receive only 20 percent worktime credit. Thus, according to Dedmon, the court abused its discretion when it denied his motion to withdraw his plea. We will reject this contention.

"When a defendant is represented by counsel, the grant or denial of an application to withdraw a plea is purely within the discretion of the trial court after consideration of all factors necessary to bring about a just result. [Citations.] On appeal, the trial court's decision will be upheld unless there is a clear showing of abuse of discretion. [Citations.] An abuse of discretion is found if the court exercises discretion in an arbitrary,

capricious or patently absurd manner resulting in a manifest miscarriage of justice. [Citation.]

"Section 1018 requires a showing of good cause to allow withdrawal of a plea. [Citation.] …

"'"'While ... section [1018] is to be liberally construed and a plea of guilty may be withdrawn for mistake, ignorance, or inadvertence or any other factor overreaching defendant's free and clear judgment, the facts of such grounds must be established by clear and convincing evidence. [Citations.]"' [Citation.] The burden is on the defendant to present clear and convincing evidence the ends of justice would be subserved by permitting a change of plea to not guilty. [Citation.]" (*People v. Shaw* (1998) 64 Cal.App.4th 492, 495-496.)

"'It is well settled that where ineffective assistance of counsel results in the defendant's decision to plead guilty, the defendant has suffered a constitutional violation giving rise to a claim for relief from the guilty plea. [Citations.] [When the contention is that incompetent advice led to a defendant's pleading guilty], a defendant must establish not only incompetent performance by counsel, but also a reasonable probability that, but for counsel's incompetence, the defendant would not have pleaded guilty and would have insisted on proceeding to trial. [Citation.]' [Citations.]" (*In re Vargas* (2000) 83 Cal.App.4th 1125, 1134, brackets in original.)

A defendant's assertion he would not have pled guilty if he had received effective assistance of counsel "'must be corroborated independently by objective evidence.'" (*In re Resendiz* (2001) 25 Cal.4th 230, 253.) "A defendant's statement to that effect is not sufficient. [T]here must be some objective showing." (*In re Vargas, supra*, 83 Cal.App.4th at p. 1140.)

Here, after the court denied Dedmon's *Romero* motion, defense counsel was equivocal when asked if he had advised Dedmon that he would receive 50 percent worktime credit in prison. Counsel was also equivocal in his declaration in support of Dedmon's motion to withdraw his plea. According to Attorney Geringer, he told Dedmon that "he could receive up to 50 percent good time credit" in prison. This statement was accurate because Dedmon could have gotten 50 percent worktime credit under the plea bargain if the court had struck Dedmon's prior strike conviction. Thus we

conclude that Dedmon did not meet his burden of proving that defense counsel provided ineffective representation by misadvising him that he would receive these credits.

Moreover, the only evidence Dedmon cites in support of his claim that he would not have pled guilty if he had known that his ability to earn worktime credit was restricted is his own, self-serving statement to that effect in the declaration he submitted in support of his motion to withdraw his plea. The court could have found that this was insufficient to meet Dedmon's burden under the authorities cited above. Additionally, we note that Dedmon received a substantial benefit by reducing his potential sentence from 17 years four months[3] to the nine-year, four-month lid provided by his plea bargain. And, in evaluating Dedmon's credibility the court could consider the timing of his request to withdraw his plea, which occurred immediately after the court denied Dedmon's motion to strike his prior strike conviction. Thus we conclude that the record supports the trial court's implicit finding that Dedmon was not denied the effective assistance of counsel in entering his plea.

To support his contention that he would not have entered a plea if he had known of the limitation on his worktime credit, Dedmon contends that the evidence in his transportation case was weak and it is unlikely that he would have received the maximum term of 17 years four months if he had been convicted on all counts. We disagree.

Dedmon contends the evidence in the transportation case was weak because the officer did not see him drop the baggies containing methamphetamine and marijuana. Dedmon is wrong.

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[3] The parties erroneously assert that Dedmon faced a maximum term of 16 years four months. In fact, he faced a maximum term of 17 years four months calculated as follows: the aggravated term of four years on his the transportation offense, doubled to eight years because of Dedmon's prior strike conviction; a consecutive eight-month term on his possession of methamphetamine offense in case No. MCR031194, doubled to 16 months because of Dedmon's strike conviction; a two-year on-bail enhancement and six prior prison term enhancements.

Dedmon was acting suspiciously when the officer approached him: his hands were shaking, he would not make eye contact with the officer, he continually reached toward his pants pockets as if attempting to retrieve something, and he would not place his hands on the steering wheel as directed by the officer. When the officer opened the door to get Dedmon out of the car, Dedmon appeared to get something from his pants pocket and appeared to swallow it. Further, the drugs were found on the street near Dedmon's truck and he exhibited a consciousness of guilt when he fled from the officer. Accordingly, we reject Dedmon claim that the the evidence relating to his transportation offense was weak.

There is also no merit to Dedmon's contention that it was unlikely that if convicted of all counts and all the allegations were found true he would have received the maximum term of 17 years four months because he is blind in one eye, is a drug addict, suffers from hepatitis C, and was alleged to have possessed only small amounts of marijuana and methamphetamine. Dedmon's probation report indicates that Dedmon had a lengthy criminal record extending back to 1980 and that he violated his probation and parole on numerous occasions. In both cases the probation report lists no circumstances in mitigation and the following four circumstances in aggravation: (1) Dedmon's prior convictions were numerous and serious, (2) he served prior prison terms that were not used to enhance his sentence, (3) he was on parole when he committed the offenses in both cases, and (4) his prior performance on probation and parole was unsatisfactory.

Given Dedmon's dismal record, it is unlikely the trial court would have imposed anything less that the four-year upper term on his transportation offense, which when doubled would have resulted in an eight-year principal term. There was also no apparent reason for the court not to impose a consecutive term on Dedmon's simple possession of methamphetamine offense or for the court to strike any of the prior prison term enhancements. Thus, it is unlikely Dedmon would have received any less that the maximum term notwithstanding the other factors cited by Dedmon. Therefore, we

conclude that the trial court did not abuse its discretion when it denied Dedmon's motion to withdraw his plea.

DISPOSITION

The judgment is affirmed.